

SB 761 (Lowenthal)

As amended on May 10, 2011

Consumer Protection: Do not Track

FACT SHEET

PURPOSE

A “**Do Not Track**” mechanism is a method that allows a computer user to send a clear message that the computer user does not want his/her online activities to be tracked.

Requires search engines and browsers to provide a computer user in California a method to **opt out** of the collection, use, and storage of specified information.

SUMMARY

SB 761:

1. Requires the Department of Attorney General (AG), in consultation with the California Office of Privacy Protection to adopt regulations on or before July 1, 2012
2. Defines covered entity, covered information, and sensitive information
3. Specifies requirements that shall be included in the regulations
4. Specifies information that may be included in the regulations
5. Specifies that regulations shall not interfere with, affect, or prohibit a commercial relationship between a consumer and a covered entity where the consumer expressly opts in to the collection and use of his or her covered information by the covered entity for the purpose of engaging in that

commercial relationship. However, if a majority of the covered entity's revenue is derived from online advertising and marketing, the regulations may regulate and affect such a commercial relationship.

6. Allows the AG to provide exemptions from some or all of the regulations
7. Specifies that a covered entity that willfully fails to comply with the regulations with respect to an individual is liable to that individual in a civil action

BACKGROUND

A poll conducted by Grove Insight¹ for Consumer Watchdog in July 2010 revealed that 90 percent of Americans want more laws to protect online privacy, 86 percent favored the creation of an ‘anonymous button’ that allows individuals to stop anyone from tracking their online searches that would be administered by the Federal Trade Commission (FTC.)

A USA TODAY/Gallup poll² found that nearly seven out of 10 Facebook members surveyed — and 52% of Google users — say they are either “somewhat” or “very concerned” about their privacy while using the world's most

¹<http://www.consumerwatchdog.org/newsrelease/consumer-watchdog-poll-finds-concern-about-googles-wi-spy-snooping>

²http://www.usatoday.com/tech/news/2011-02-09-privacypollo9_ST_N.htm

popular social network and dominant search engine.

On December 1, 2010, the FTC issued a preliminary report proposing a framework to balance the privacy interests of consumers with the innovation that relies on consumer information to develop beneficial new products and services. The report also suggests the implementation of a “Do Not Track” mechanism – like a persistent setting on consumers’ browsers—so consumers can choose whether to allow the collection of data regarding their online searching and browsing activities.³

In response to the FTC recommendation, Google Chrome and Mozilla’s Firefox Web announced, on January 24, 2011, that their browsers are each gaining new features that will block advertisers from tracking Web surfing habits.

Firefox’s feature, called [Do Not Track](#), and Google Chrome’s utility add on application, called [Keep My Opt-Outs](#), are available now. Microsoft, Internet Explorer 9 enables users to create lists of websites they do or do not want tracking them.

On February 11, 2011, Congresswoman Jackie Speier (D-CA) introduced a package of privacy bills aimed at protecting the personal information of American consumers. The Do Not Track Me Online Act of 2011 (H.R. 654) would give consumers the ability to prevent the collection and use of data on their online activities.⁴

ADDITIONAL RESOURCES

Do not track tools push firms to crossroads by James Temple at http://articles.sfgate.com/2011-03-20/business/29147667_1_marketers-mozilla-s-firefox-privacy

‘Do Not Track Me Online’ privacy bill introduced by California Rep. Jackie Speier by David Sarno at <http://latimesblogs.latimes.com/technology/2011/02/>

³<http://www.ftc.gov/opa/2010/12/privacyreport.shtm>

⁴<http://www.govtrack.us/congress/bill.xpd?bill=h112-654>

do-not-track-me-online-privacy-legislation-introduced-by-calif-congresswoman.html

Google Chrome, Mozilla Firefox announce tools to block Web tracking by advertisers by Nathan Olivares-Giles at <http://latimesblogs.latimes.com/technology/2011/01/google-chrome-mozilla-firefox-to-add-do-not-track-web-surfing-features.html>

SUPPORT

Consumer Watchdog (SPONSOR)

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Common Sense Media
Consumer Action
Consumer Federation of California

SUPPORT IF AMENDED

The Electronic Frontier Foundation
Privacy Rights Clearinghouse

OPPOSE

Personal Insurance Federation of CA
California Bankers Association
Cal Chamber
CA Cable & Telecommunications Association
CTIA – The Wireless Association
Direct Marketing Association
Privacy & Security Coalition
Association of CA Insurance Companies
Toy Industry Association, Inc.
TechNet
CA Attractions and Parks Association
American Insurance Association
Association of CA Life & Health Insurance Companies
Google
Motion Picture Association of America
The National Business Coalition on E-commerce and Privacy
Net Choice
Internet Alliance
American Advertising Federation
Time Warner Cable
Iab

Entertainment Software Association
ANA
Aol
American Express
Acxiom
24-7 RealMedia
4As
Amway
CalCom
A's

STATUS

Senate Judiciary passed 3-2.

Senate Appropriations Committee (not heard.)

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